

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ARGONAUT INSURANCE COMPANY,)
)
Plaintiff,)
)
v.)
) C.A. No.: 3:22-cv-00390
JOHN MCCOLLUM,)
)
And)
)
S&F LOGISTICS, LLC)
)
Defendants.)
)

)

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION
FOR LEAVE TO FILE AMENDED COMPLAINT**

Plaintiff, Argonaut Insurance Company, by and through undersigned counsel, hereby file this Memorandum in Support of Motion for Leave to file Amended Complaint, stating as follows:

1. On May 20, 2022, Plaintiff filed its Complaint in the above-referenced matter. ECF No. 1. The Complaint sought declaratory relief including, *inter alia*, that Argonaut Insurance Company has no duty under a policy for insurance to defend or indemnify Defendants S&F Logistics, LLC and John McCollum in connection with a lawsuit filed in the Court of Common Pleas of Philadelphia County, Pennsylvania, styled *Victor Hugo Silvestre Garcia v. S&F Logistics LLC and John McCollum*, Case ID No.: 210800737. ECF No. 1 at 18.

2. On July 19, 2022, Defendant S&F Logistics, LLC was served by the Virginia State Corporation Commission, in accordance with Section 12.1-19.1 of the Code of Virginia. As S&F Logistics, LLC failed to respond to the Complaint, a Motion for Default is pending before this Court. ECF No. 13.

3. Despite diligent efforts on the part of the Plaintiff, Defendant John McCollum has not yet been served with the Complaint. However, Plaintiff's have recently discovered and verified a residential address in Mechanicsville, Maryland where Mr. McCollum can be served with process.

4. Due to a drafting error, Paragraph 2 of the original Complaint states that "Plaintiff Argonaut Insurance Company is a corporation organized and existing under the laws of the State of Illinois with its principal place of business in San Antonio, Texas. Argo is a citizen of Texas." However, Argonaut is a corporation organized and existing under the laws of Illinois with its principal place of business in Chicago, Illinois. It is a citizen of Chicago.

5. Additionally, Paragraph 4 of the Complaint states that "Defendant John McCollum is an employee or agent of S&F, and a citizen of Tennessee, being a natural person who resides at 420 Joann Rd., Somerville, Tennessee 38068." However, it was recently discovered that Mr. McCollum moved from Tennessee and is now residing at 27465 N. Sandgate Rd., Mechanicsville, Maryland 20659.

6. Plaintiff now seeks leave of Court to file an Amended Complaint (attached as Exhibit A). "Rule 15(a) directs that leave to amend 'shall be freely given when justice so requires.' This liberal rule gives effect to the federal policy in favor of resolving cases on their merits instead of disposing of them on technicalities." *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (en banc). "[L]eave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile." *Id.* (quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir.1986)).

7. The proposed Amended Complaint revises allegations pertaining to the citizenship of the Plaintiff and updates allegations pertaining to the residence and citizenship of Defendant McCollum.

8. Furthermore, the Amended Complaint would not prejudice the Defendants and is not offered in bad faith. The Amended Complaint merely changes allegations relating to citizenship without defeating complete diversity of the parties.

9. Lastly, the Amended Complaint would also not be futile. “Leave to amend . . . should only be denied on the ground of futility when the proposed amendment is clearly insufficient or frivolous on its face.” *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986); *see Parker v. Berryhill*, No. 4:17CV143, 2018 WL 5255233, at *1 (E.D. Va. Oct. 22, 2018). No additional claims are being asserted and Plaintiff does not seek additional relief.

10. For all these reasons, Plaintiff respectfully requests that the Court grant leave to file the attached Amended Complaint.

Respectfully Submitted,

ARGONAUT INSURANCE COMPANY
By Counsel,

/s/ Aaron J. Cheatham
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Motion for Leave to File Amended Complaint* was served via first-class U.S. mail, postage pre-paid, this 2nd day of September 2022 upon the following:

S&F Logistics, LLC
c/o Ronald Zubieto, Registered Agent
15476 Nelson Hill Road,
Milford, Virginia 22514

S&F Logistics, LLC
16360 Industrial Drive
Milford, Virginia 22514

John McCollum
27465 N. Sandgate Road
Mechanicsville, Maryland 20659

/s/ Aaron J. Cheatham
Aaron J. Cheatham